

unless otherwise prescribed by the Secretary.

(2) Must have an account in default, for such period as determined by the Secretary, which default is the result of an adverse and unavoidable financial situation.

(3) Must have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary.

(4) Must have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

[59 FR 50144, Sept. 30, 1994, as amended at 61 FR 35018, July 3, 1996]

§ 203.371 Partial claim.

(a) *General.* Notwithstanding the conveyance, sale or assignment requirements for payment of a claim elsewhere in this part, HUD will pay partial FHA insurance benefits to mortgagees after a period of forbearance, the maximum length of which HUD will prescribe, and in accordance with this section.

(b) *Requirements.* The following conditions must be met for payment of a partial claim:

(1) The mortgagor has been delinquent for at least 4 months or such other time prescribed by HUD;

(2) The amount of the arrearage has not exceeded the equivalent of 12 monthly mortgage payments;

(3) The mortgagor is able to resume making full monthly mortgage payments;

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time specified by HUD; and

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under

§ 203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments required by paragraph (c) of this section.

[61 FR 35018, July 3, 1996, as amended at 62 FR 60130, Nov. 6, 1997]

CONDITION OF PROPERTY

§§ 203.375–203.376 [Reserved]

§ 203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by § 203.355(b) of this part.

[57 FR 47972, Oct. 20, 1992]

§ 203.378 Property condition.

(a) *Condition at time of transfer.* When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with

mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377 of this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, any damage of whatsoever nature that the property has sustained while in the possession of the mortgagee if the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

[36 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976; 57 FR 47973, Oct. 20, 1992; 58 FR 32057, June 8, 1993; 61 FR 36265, July 9, 1996; 61 FR 36453, July 10, 1996]

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(1) If the prior approval of the Secretary is obtained, there will be deducted from the insurance benefits the Secretary's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage; and

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 203.377 of this part.

(3) The certification requirements set out in paragraph (a)(2) of this section apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986) Edition as it existed immediately before September 30, 1986.

(4)(i) As used in this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by